

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

MAR -1 2013

U-SAVE AUTO RENTAL OF
AMERICA, INC.

PLAINTIFF,

v.

SANFORD MILLER,

DEFENDANT.

NO. 3:13CV127 HTW-URA

COMPLAINT FOR DECLARATORY JUDGMENT

1. Plaintiff U-Save Auto Rental of America, Inc. (U-Save) is a corporation organized and incorporated under the laws of the state of Mississippi. Its principal offices are located at 1052 Highland Colony Parkway, Suite 204, Ridgeland, Mississippi, 39157. U-Save is a wholly-owned subsidiary of U-Save Holdings, Inc., a Mississippi corporation. U-Save Holdings, Inc. is a wholly owned subsidiary of Franchise Services of North America Inc., a corporation organized under the laws of Canada, with its principal United States offices located in Ridgeland, Mississippi.

2. Sanford Miller (Miller) is an adult resident citizen of Ormond Beach, Florida. Miller may be served with process at 28 Broadriver Road, Ormond Beach, Florida, 32174 or 444 Seabreeze Boulevard, Suite 1002, Daytona Beach, Florida, 32118.

3. There is diversity of citizenship between U-Save and Miller and the amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00.

4. This complaint is filed under the Federal Declaratory Judgment Act, 28 U.S.C. 2201 *et seq.*, and Rule 57 of the Federal Rules of Civil Procedure, and involves an actual, real, and substantial controversy, justiciable in character, touching the legal relationships of parties having legal interests, admitting of specific relief through a decree conclusive in character involving the respective rights, duties, and liabilities of the parties under a certain Executive Employment Agreement, dated 5 December 2003, employing Miller as a Co-Chief Executive Officer and Co-Chairman, and an Amendment thereto, dated 28 January 2010, entered into by U-Save and Miller. Duplicates of the Agreement and the Amendment thereto are attached to this complaint as Exhibit "1" (collectively, the "Agreement"). As stated in paragraph 16 of Exhibit "1," the Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi.

5. Miller served as the Co-Chief Executive Officer and Co-Chairman of Franchise Services of North America Inc. (FSNA) during the period November 2006 to December 2012. There was no written contract of employment between Miller and FSNA. Miller received no additional or separate compensation from FSNA for serving as a Co-Chief Executive Officer and Co-Chairman of that entity. Other than the grant of certain stock options pursuant to FSNA's stock option plan, all compensation paid and benefits provided to Miller were under the Executive Employment Agreement between Miller and U-Save.

6. The Agreement defines "cause" for termination as an act or acts of dishonesty by Miller in connection with his employment; any conduct with or against

another employee, customer or other person, including conduct involving moral turpitude, which causes or is likely to cause U-Save's embarrassment, liability, or damage; and Miller's repeated failure to perform his duties or to perform in accordance with directions received from U-Save's board of directors.

7. MISSISSIPPI CODE ANNOTATED Section 79-4-8.42 (Supp. 2012) establishes the standards of conduct for corporate officers. The statutory standards require officers with discretionary authority to discharge their duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the officer reasonably believes to be in the best interests of the corporation. MISS. CODE ANN. Section 79-4-8.42(a)(1) - (3) (Supp. 2012).

8. Based upon information provided to an independent committee of the board of directors of FSNA, the FSNA board determined that Miller's termination from all of his executive offices with FSNA was in the best interests of FSNA and its shareholders. Accordingly, on 6 December 2012 Miller was terminated as the Co-Chief Executive Officer of FSNA after being given an opportunity to resign from that position. Miller voluntarily resigned his Co-Chairman position with FSNA on 7 December 2012. FSNA accepted Miller's resignation on 10 December 2012.

9. Miller was terminated for cause from his positions as Co-Chief Executive Officer and Co-Chairman of U-Save on 7 December, 2012, and the Executive Employment Agreement was terminated for cause. Miller was terminated for the following reasons:

a. Miller opened a bank account at a bank of which he was an officer in violation of corporate bylaws, deposited a check made payable to FSNA in that bank account, and disbursed funds to himself from the bank account.

b. Miller assigned an inflated value to property that he owned and was attempting to sell to an affiliate of an entity involved in an acquisition transaction with FSNA, with that affiliate to be merged with FSNA as part of the transaction. Miller also falsely represented that an alternative property under consideration by the buyer was subject to a restriction that would not allow the property to be used for the purposes intended by the buyer.

c. Miller, as a shareholder of a U-Save franchisee, used his influence as an officer of U-Save to forestall collection activities against the franchisee after the franchisee defaulted on its obligations. Previously, Miller used his influence as a U-Save officer to preclude his signing a personal guarantee for the performance of the franchisee's obligations, a material deviation from the standard requirement that shareholders of a franchisee be guarantors.

10. Miller was terminated from his positions because his actions constituted serious misconduct incompatible with his duties and prejudicial to U-Save's business. Miller's acts which caused his termination as Co-Chief Executive Officer and Co-Chairman of U-Save were acts falling within the scope of the grounds listed in the Agreement for a "for cause" termination. Miller's acts which caused his termination were acts in violation of the statutory standards of conduct listed at MISSISSIPPI CODE ANNOTATED section 79-4-8.42 (Supp. 2012).

11. The termination of Miller as Co-Chief Executive Officer and Co-Chairman of U-Save was compliant with the Executive Employment Agreement and MISSISSIPPI CODE ANNOTATED sections 79-4-8.42 and 79-4-8.43 (Supp. 2012).

12. U-Save has standing to seek a remedy in this action concerning a determination of the rights, duties, and obligations of U-Save and Miller under the involved Executive Employment Agreement.

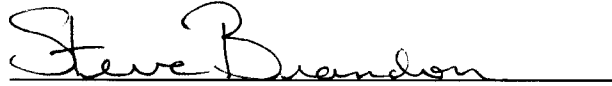
12. An actual, bona fide, and justiciable legal issue has arisen as to the relative rights and obligations of the parties under the Executive Employment Agreement, and U-Save desires to avail itself of the provisions of the Federal Declaratory Judgment Act to resolve any disputes and to avoid a multiplicity of actions.

13. U-Save respectfully requests that after due proceedings are had, this Court enter a judgment declaring:

- a. Miller was terminated from his positions as Co-Chief Executive Officer and Co-Chairman of U-Save for cause effective 7 December 2012.
- b. Miller's termination was not a "qualifying termination."
- c. U-Save has no contractual duty to pay Miller any severance pay or benefits.
- d. The Agreement has been terminated and no longer has any force or effect.
- e. U-Save is entitled to an award of contractual attorney's fees, litigation expenses, and costs.

Respectfully submitted,

U-SAVE AUTO RENTAL OF AMERICA, INC.

A handwritten signature in dark ink, appearing to read "John B. Gillis", is written over a horizontal line.

JOHN B. GILLIS
MISSISSIPPI BAR NO. 8694

STEPHEN A. BRANDON
MISSISSIPPI BAR NO. 8655

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